



Kathryn R. Barney
(Member of the Florida Bar)

FILED

DEC 12 2008

**SURFACE
TRANSPORTATION BOARD**

224181
Law Department
500 Water Street
Speed Code J-150
Jacksonville, FL 32202
Fax (904) 245-3892
Telephone (904) 359-1305
Email kathryn_barney@csx.com

December 11, 2008

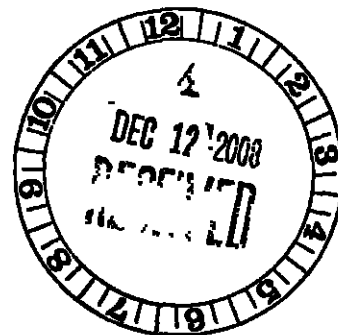
Via UPS Overnight Delivery

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

FEE RECEIVED

DEC 12 2008

**SURFACE
TRANSPORTATION BOARD**



RE Docket No. AB-55 (Sub-No. 692X), CSX Transportation, Inc. —
Abandonment Exemption—in Niagara County, NY

Dear Acting Secretary Quinlan:

Enclosed are the original and 10 copies of a Verified Notice of Exemption for abandonment in the above-entitled proceeding and a check for the filing fee of \$3,700. Also enclosed is a computer diskette containing the Notice.

Please time and date stamp the additional copy of this letter and return it to me in the enclosed self-addressed stamped envelope. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,

Kathryn R. Barney

Kathryn R. Barney

Enclosures

ENTERED
Office of Proceedings
DEC 12 2008
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No AB-55 (Sub-No 692X)

CSX TRANSPORTATION, INC –ABANDONMENT EXEMPTION–
IN NIAGARA COUNTY, NY

VERIFIED NOTICE OF EXEMPTION

CSX Transportation, Inc (“CSXT”) files this Verified Notice of Exemption pursuant to the class exemption at 49 C F R § 1152.50 for CSXT to abandon a 1.06-mile rail line on its Northern Region, Albany Division, Niagara Subdivision from Railroad Milepost QDJ 0.94 to the end of track at Railroad Milepost QDJ 2.0, a distance of 1.06 miles known as the Wurlitzer Industrial Track, North Tonawanda, Niagara County, New York (the “Line”). No local or overhead rail traffic has moved over the Line during the past two years.

1. Proposed consummation date. The proposed consummation date is January 31, 2009 (or such later date that is 50 calendar days from the date this Verified Notice of Exemption is received by the Board)

2. Certification required by 49 C F R. § 1152.50(b) See Exhibit A

3. Information required by 49 C F R. § 1152.22(a)(1) through (4), (7), and (8), and (e)(4)

(e) Rural and community impact Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads and highways, other forms of mass transportation, conservation, energy production or transmission, or recreation If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

CSXT believes that the properties proposed for abandonment may be suitable for other purposes, but may be subject to reversionary interests that may affect transfer of title for other than rail purposes.

4 The level of labor protection. The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions in *Oregon Short Line R Co -- Abandonment -- Goshen*, 360 I.C.C 91 (1979)

5 Certification Certificates of compliance with the notice requirements of 49 C.F.R. §§ 1152.50(d)(1) and 1105.11 are attached as Exhibit C (Certificate of Service, Certificate of Publication), Exhibit D (Certificate of Distribution of Environmental Report) and Exhibit E (Certificate of Distribution of Historical Report)

6 Environmental Report See Exhibit D Based on information in the possession of CSXT, the Line does not contain federally granted rights-of-way Any documentation in the railroad's possession will be made available promptly to those requesting it

EXHIBIT A

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

[See attached]

EXHIBIT B

MAP

[See attached]

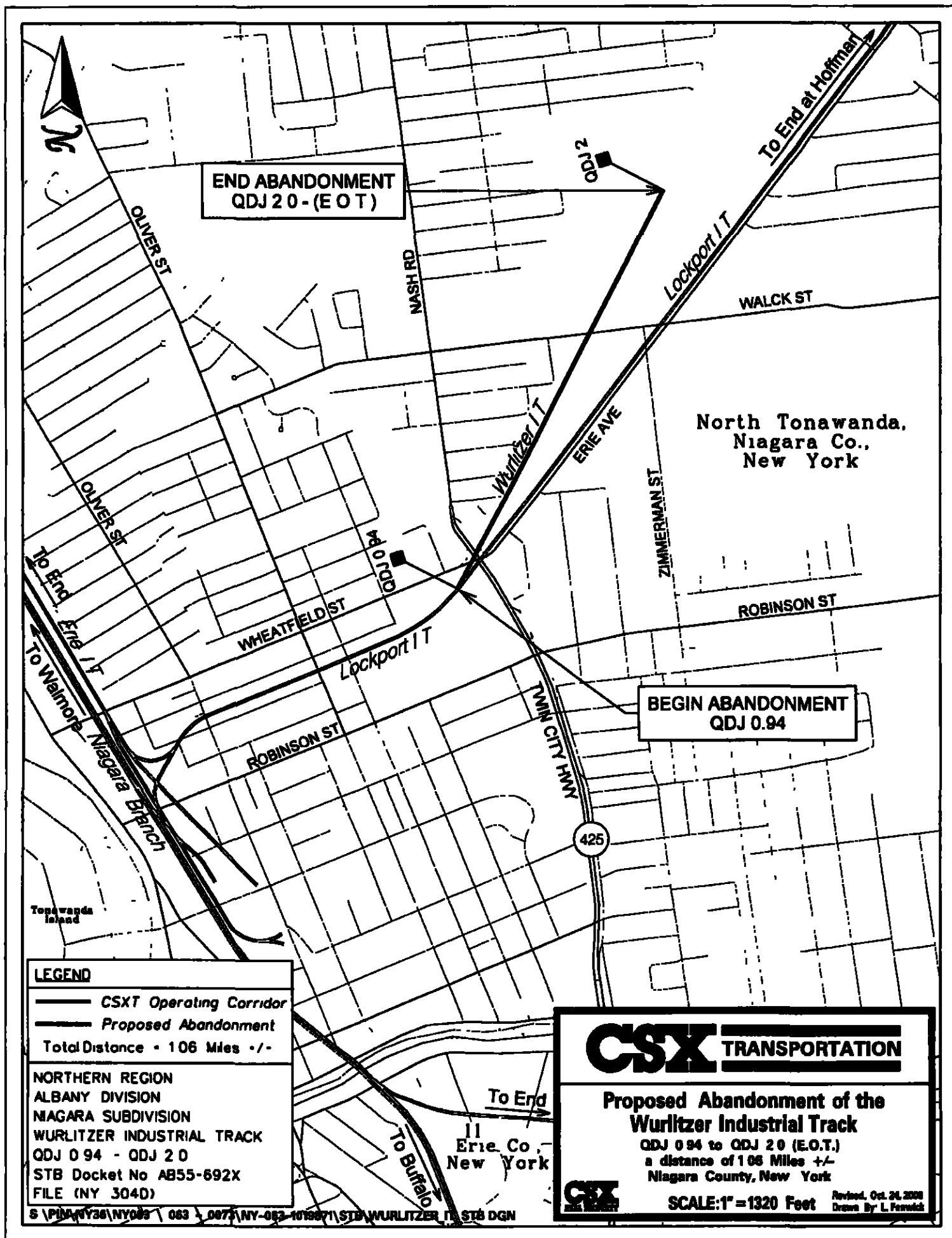


EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C F R § 1152.50 (d) (1), the undersigned hereby certifies that notice of the proposed abandonment in Docket No AB-55 (Sub-No 692X) was mailed via UPS overnight express mail on November 26, 2008, to the following parties.

State Public Service Commission

Hon. Jaclyn A. Brilling
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

Military Surface Deployment and Distribution Command

SDDCTEA
ATTN: Railroads for National Defense
720 Thimble Shoals Blvd
Suite 130
Newport News, VA 23606-2574

National Park Service

Mr. Rick Potts, Program Chief
Rivers, Trails and Conservation Assistance Program National Park Service
1849 C Street, NW (Org Code 2240)
Washington, DC 20240-0001

National Park Service

U S Department of Interior
National Park Service
1849 C Street, NW
Washington, D C. 20240-0001

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No AB-55 (Sub-No 692X) was advertised on December 10, 2008 in the Tonawanda News, a newspaper of general circulation in Niagara County, NY, as required by 49 C.F.R. § 1105.12


Kathryn R. Barney
December 10, 2008

**ENVIRONMENTAL REPORT
CERTIFICATE OF SERVICE**

Pursuant to the requirements of 49 C F R § 1105 7(c) and 11, the undersigned hereby certifies that a copy of the Environmental Report in Docket No AB-55 (Sub-No. 692X) was mailed via first class mail on November 13, 2008 to the following parties

Mr Sam Ferraro
Niagara County Planning Commissioner
Vantage Center
6311 Inducon Corporate Drive
Sanborn, NY 14132

Mr. Lawrence Soos, Mayor
City of North Tonawanda
City Hall
216 Payne Avenue
North Tonawanda, NY 14120

U S EPA
Region 2
290 Broadway
New York, NY 10007-1866

Mr Angus Gatson
New York State Department of Environmental Conservation
Division of Water
625 Broadway
Albany, New York 12233-0001

U.S Fish and Wildlife Service
New York Field Office
3817 Luker Rd
Cortland, NY 13045

U S Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, NY 14207-3199

USDA – NRCS
Lockport Service Center
4487 Lake Ave
Lockport, NY 14094-1139

ENVIRONMENTAL REPORT

**CSX TRANSPORTATION, INC.
ERIE INDUSTRIAL TRACK
NIAGARA COUNTY, NEW YORK
DOCKET AB-55 (SUB-NO. 649X)**

The following information is provided in accordance with 49 C.F.R. Section 1105.7.

(1) PROPOSED ACTION AND ALTERNATIVES

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

CSXT proposes to abandon approximately 1.06-miles of its rail operations from Railroad Milepost QDJ 0.94 to QDJ 2.0, known as the Wurlitzer Industrial Track in North Tonawanda, Niagara County, New York.

The above referenced 1.06-mile line has not generated any originating or terminating traffic in over two years.

Abandonment of this line will result in the removal of the rail, crossties, and possibly the upper layer of ballast. CSXT does not intend to disturb any sub grade or sub grade structures. Finally, the operations and maintenance of this line will cease. Removal of the rail line will result in the elimination of three (3) public at-grade crossings.

The only alternative would be not to abandon and to pass the operating loss and capital costs of retaining the line to all other CSXT customers. This would not be a prudent utilization of carner resources.

Two maps, which delineate the proposed project, are attached. (See Attachments 1 and 2)

Further attached is a list of all agencies which have received a copy of this environmental report. (See Attachment 3)

Applicant has not received a response to its inquiry dated October 27, 2008 to the New York Department of State – Division of Coastal Resources seeking information regarding this statement. (See Attachment 7)

Applicant feels that the simple removal of track material should not have an adverse impact on any coastal zone, land or water uses.

- (iv) If the proposed action is an abandonment, state whether or not the right of way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.**

The properties, proposed to be abandoned, may be suitable for other public purposes, but may be subject to reversionary interests that may affect the transfer of title for other than rail purposes.

(4) ENERGY

- (i) Describe the effect of the proposed action on transportation of energy resources.**

The proposed action will have no effect on the transportation of energy resources.

- (ii) Describe the effect of the proposed action on recyclable commodities.**

The proposed action will have no effect on the movement and/or recovery of recyclable commodities

- (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.**

The proposed action will not result in an increase or decrease in overall energy efficiency.

- (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.**

There will be no diversion of rail traffic to motor carriage in excess of the above thresholds

(5) AIR

- (i) If the proposed action will result in either: (A) an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day²¹ on any segment of rail line affected by the**

- (II) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

Not applicable.

- (III) If there are any known hazardous waste sites or sites where there have been known hazardous material spills on the right of way, identify the location of those sites and the types of hazardous materials involved.

Applicant's records do not indicate any hazardous waste sites or sites where there have been hazardous material spills on this line segment.

(8) BIOLOGICAL RESOURCES

- (I) Based on consultation with the U. S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

Applicant received a response dated November 24, 2008 from the U.S. Fish and Wildlife Service – New York Field Office stating “*..no effect and/or no impact determination. No further ESA coordination or consultation is required.*” (See Attachment 8)

Based upon Applicant's intention to remove only the track material and the upper layer of ballast, we do not believe that any federally endangered or threatened species will be negatively affected or critical habitats modified if the line is abandoned.

- (II) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

Based upon Applicant's review of the area, the line segment does not appear to be near any parks, wildlife sanctuaries, refuges, or forests.

- (iii) **State whether permits under Section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U. S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required).**

Applicant received a response dated November 26, 2008 from the U.S. Environmental Protection Agency, Region 2 in New York, New York stating *"The New York State Department of Environmental Conservation is authorized to implement the Section 402 permit program in New York State. We suggest that you contact that agency directly .."* (See Attachment 11)

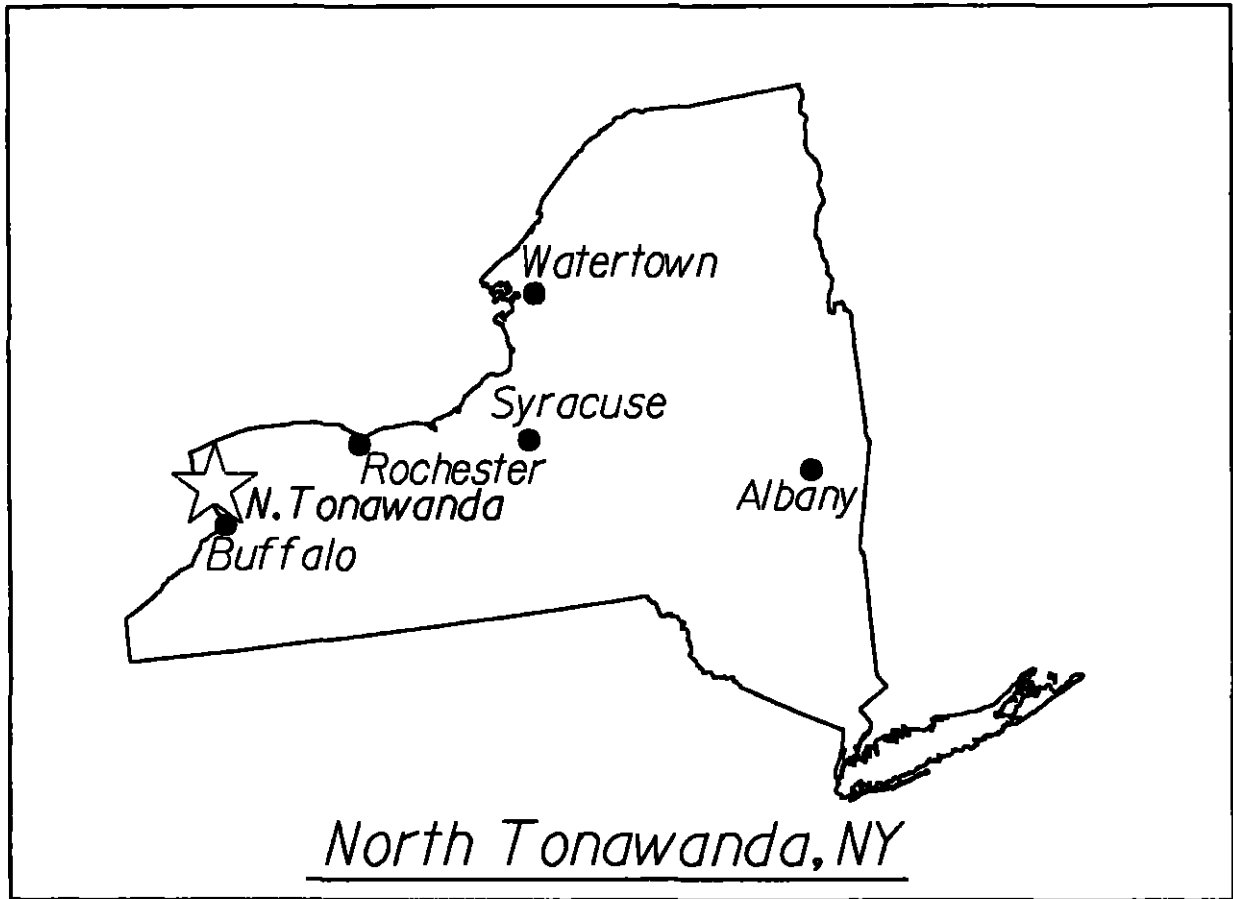
Applicant has requested information from the New York State Department of Environmental Conservation as shown in Section 9 (i).

Based upon the course of action described in Section 9 (ii), Applicant does not believe a permit under Section 402 of the Clean Water Act will be required

10. MITIGATION

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Applicant does not anticipate any adverse environmental impacts in the project area as a result of this abandonment, however, if mitigation is necessary, Applicant will comply with State and Federal regulations and obtain any reasonable necessary permits required.



AREA MAP

- Proposed Abandonment -
Wurlitzer Industrial Track
QDJ 0.94 to QDJ 2.0 - 1.06 miles
North Tonawanda, Niagara County, New York

Niagara County

Center for Economic Development

Niagara County Department of Economic Development

6311 Inducon Corporate Drive
Sanborn, NY 14132-9099
716 - 278 - 8750
Fax 716 - 278 - 8757
www.nccedev.com

Samuel M. Ferraro
Commissioner

November 18, 2008

Dave Geraci
Project Manager
CSX Transportation
500 Water Street - J200
Jacksonville, FL 32202

RE: CSX Transportation Proposed Abandonment of Wurlitzer Industrial Track in the City of North Tonawanda, NY

Dear Mr. Geraci,

Thank you for your October 27, 2008 letter requesting Niagara County Department of Economic Development's input regarding CSX Transportation's proposed abandonment of the Wurlitzer Industrial Track in the City of North Tonawanda

The proposed abandonment is currently under review by the City of North Tonawanda and it is anticipated that the City will issue a comment letter directly to CSX Transportation regarding the proposed abandonment. To this end, I would like to take this opportunity to support the recommendation that will be forthcoming from the City of North Tonawanda.

If you have any questions in this regard, please feel free to contact Ms Amy Fisk of my staff at (716) 278-8750.

Thank you

Sincerely,



Samuel M. Ferraro, Commissioner
Niagara County Department of Economic Development

CC: Mayor Lawrence V Soos, City of North Tonawanda
Brett M. Sommer, Council President, City of North Tonawanda
James Sullivan, Executive Director, Lumber City Development Corporation
Thomas Jaccanno, City Clerk, City of North Tonawanda
Andrea McNulty, Niagara County Legislator, 9th District
Peter E Smolinski, Niagara County Legislator, 10th District
Paul B. Wojtaszek, Niagara County Legislator, 11th District
Richard E. Updegrove, Chairman, NC Economic Development Committee
Gregory D. Lewis, Niagara County Manager
Amy E Fisk, AICP, Senior Planner, NC Department of Economic Development



TRANSPORTATION

Dave Geraci

Manager - Network & Joint Facility Services

Attachment 6

**500 Water Street - J200
Jacksonville, FL 32202
Phone: (904) 633-1000
FAX: (904) 244-2228
E-Mail: Dave_Geraci@CSX.com**

October 27, 2008

**USDA - NRCS
Lockport Service Center
4487 Lake Ave
Lockport, NY 14094-1139**

Gentlemen:

Please be advised that CSX Transportation, Inc. is proposing an abandonment of a portion of its rail line in North Tonawanda from Railroad Milepost QDJ 0.94 to Railroad Milepost QDJ 2.0, a distance of 1.06 miles, known as the "Wurlitzer Industrial Track", Niagara County, New York, as depicted on the attached map.

This action requires Surface Transportation Board approval and Federal Regulations 49 C.F.R. 1105.7(3)(ii) require that we develop a response to the following statement:

"Based on consultation with the U. S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land."

Please advise if any of the land contiguous to CSXT's line in the project area is classified as prime agriculture land.

Enclosed, please find a distribution list of all parties that have been copied of the proposed action.

Sincerely,

Attachment



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New York Field Office

3817 Luker Road

Cortland, NY 13045

Phone: (607) 753-9334 Fax: (607) 753-9699

<http://www.fws.gov/northeast/nyfo>

To: Dave Geraci

Date: Nov 24, 2008

USFWS File No: 90062

Regarding your: ☒ Letter ☐ FAX ☐ Email

Dated: November 13, 2008

For project: CSX railroad abandonment, Wurlitzer Industrial Track, Preliminary Environmental Report

Located:

In Town/County: Town of North Tonawanda / Niagara County

Pursuant to the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the U.S. Fish and Wildlife Service:

☒ Acknowledges receipt of your "no effect" and/or no impact determination. No further ESA coordination or consultation is required.

☐ Acknowledges receipt of your determination. Please provide a copy of your determination and supporting materials to any involved Federal agency for their final ESA determination.

☐ Is taking no action pursuant to ESA or any other legislation at this time but would like to be kept informed of project developments.

As a reminder, until the proposed project is complete, we recommend that you check our website (<http://www.fws.gov/northeast/nyfo/es/section7.htm>) every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project area is current. Should project plans change or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered.

USFWS Contact(s):

Linda L. Olson 11/24/08

Supervisor:

Dana A. Seaman

Date:

11/24/08



TRANSPORTATION

Dave Geraci

Manager - Network & Joint Facility Services

Attachment 10

500 Water Street - J200
Jacksonville, FL 32202
Phone: (904) 633-1068
FAX: (904) 244-2228
E-Mail: Dave_Geraci@CSX.com

October 27, 2008

**U.S. Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, NY 14207-3199**

Gentlemen:

Please be advised that CSX Transportation, Inc. is proposing an abandonment of a portion of its rail line in North Tonawanda from Railroad Milepost QDJ 0.94 to Railroad Milepost QDJ 2.0, a distance of 1.06 miles, known as the "Wuritzer Industrial Track", Niagara County, New York, as depicted on the attached map

This action requires Surface Transportation Board approval and Federal Regulations 49 C.F.R. 1105.7(9)(ii) require that we develop a response to the following statement:

"Based on consultation with the U. S Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100 year flood plains will be affected. Describe the effects."

It is our opinion that there will be no impact on designated wetlands or 100-year flood plains because our intent at this time is to only remove CSXT's metal track material, crossties and perhaps the upper layer of ballast, and to preserve the existing routes of water flow and drainage. We do not intend to disturb any of the underlying roadbeds or perform any activities that would cause sedimentation or erosion of the soil, and we do not anticipate any dredging or use of fill in the removal of the track material. The track removal will be accomplished by use of the right of way for access, along with existing public and private crossings, and no new access roads are contemplated. The crossties and/or other debris will be transported away from the rail line and will not be discarded along the right of way, nor be placed or left in streams or wetlands, or along the banks of such waterways.

Based upon the above described actions, we would appreciate your concurrence in CSXT's position that there would be no adverse impact on wetlands or 100-year flood plains, and that no permits under Section 404 will be required.

We would appreciate your comments; and, if you have any questions, please feel free to call me.

Enclosed, please find a distribution list of all parties that have been copied of the proposed action.

Sincerely,

Attachment

EXHIBIT E
HISTORIC REPORT
[See attached]



**New York State Office of Parks,
Recreation and Historic Preservation**

Historic Preservation Field Services Bureau • Peebles Island PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

November 20, 2008

David A. Paterson
Governor

Carol Ash
Commissioner

Dave Geraci
CSX Transportation
500 Water Street
Jacksonville, Florida 32202

Re STB
CSX Transportation- Rail Abandonment
North Tonawanda, Niagara County
08PR05782

Dear Mr. Geraci:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based upon this review, it is the SHPO's opinion that your project will have No Effect upon cultural resources in or eligible for inclusion in the National Registers of Historic Places.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Director

HISTORIC REPORT

CSX TRANSPORTATION, INC.
WURLITZER INDUSTRIAL TRACK
NORTH TONAWANDA, NIAGARA COUNTY, NEW YORK
DOCKET AB-55 (SUB-NO. 692X)

1105.7(c)(1)

PROPOSED ACTION AND ALTERNATIVES. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable detailed map and drawings clearly delineating the project.

CSXT proposes to abandon approximately 1.06-miles of its rail operations from Railroad Milepost QDJ 0 94 to QDJ 2.0, known as the Wurlitzer Industrial Track in North Tonawanda, Niagara County, New York.

The above referenced 1.06-mile line has not generated any originating or terminating traffic in over two years

Abandonment of this line will result in the removal of the rail, crosssties, and possibly the upper layer of ballast. CSXT does not intend to disturb any sub grade or sub grade structures. Finally, the operations and maintenance of this line will cease. Removal of the rail line will result in the elimination of three (3) public at-grade crossings

The only alternative would be not to abandon and to pass the operating loss and capital costs of retaining the line to all other CSXT customers. This would not be a prudent utilization of carrier resources.

Two maps, which delineate the proposed project, are attached. (See Attachments 1 and 2)

This line was acquired by the New York Central & Hudson Railroad (NYC&HRR) between 1870 and 1878. The NYC&HRR was organized on November 1, 1869 through a merger of the Hudson River Railroad Company (incorporated on May 12, 1846) and the New York Central Railroad Company (incorporated on May 1, 1853). Through a series of mergers and acquisitions, this line become owned and operated by the Erie-Lackawanna Railroad (ELRR).

The ELRR suffered many financial battles, which culminated in 1972 with the destruction of many bridges due to Hurricane Agnes. With the Rail Reorganization Act of 1973, the stages were set for ELRR to become part of Conrail. This absorption was complete in April of 1976

In 1999, CSX Corporation, CSX Transportation's (CSXT) parent company, and Norfolk Southern Corporation (NS) jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to New York Central Lines, LLC (NYC), a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line proposed for abandonment and discontinuance of service is included among the property being operated by CSXT pursuant to the NYC operating agreement.

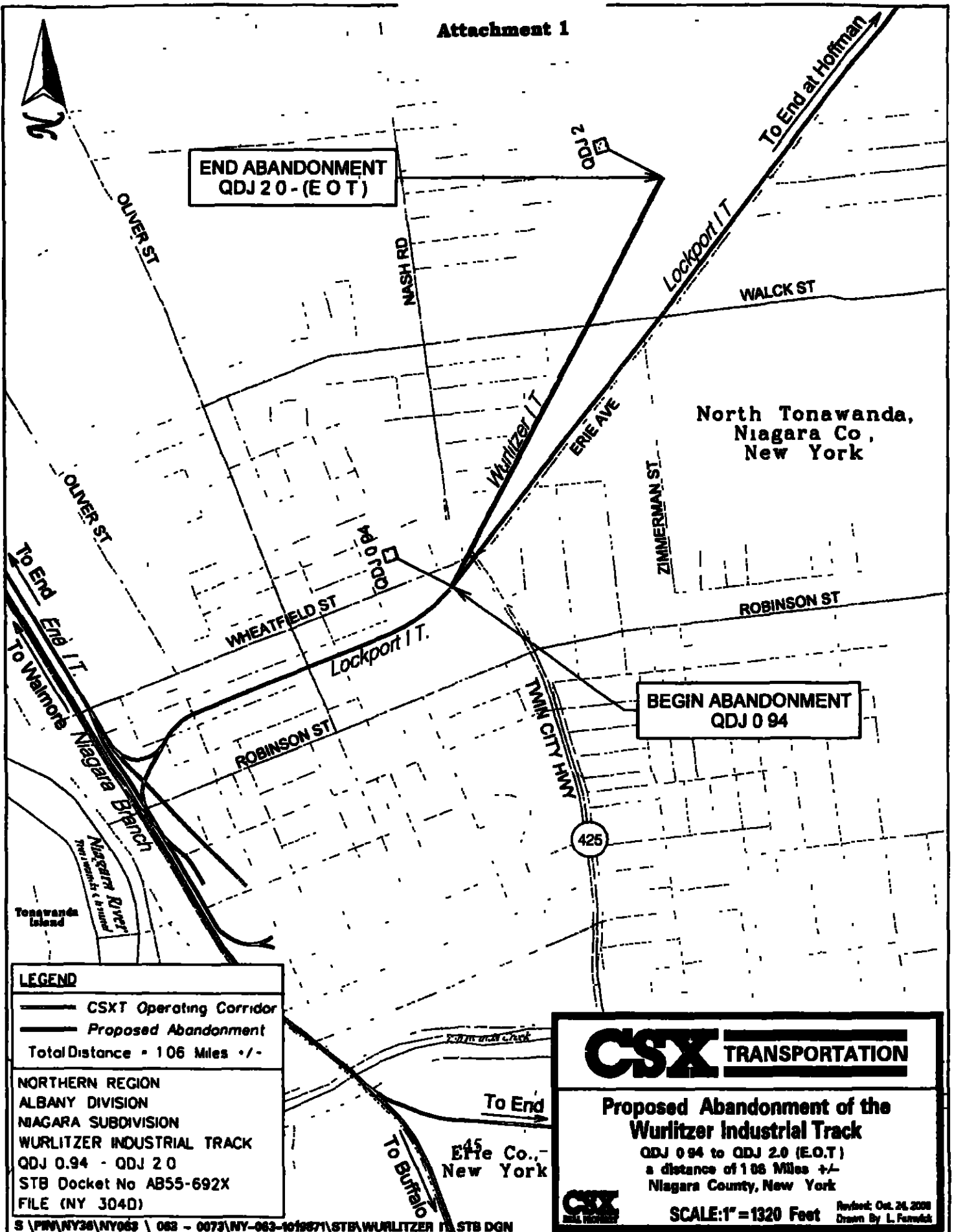
Upon receiving abandonment and discontinuance authority, Applicant's operations and maintenance over this line will cease.

- (6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic:

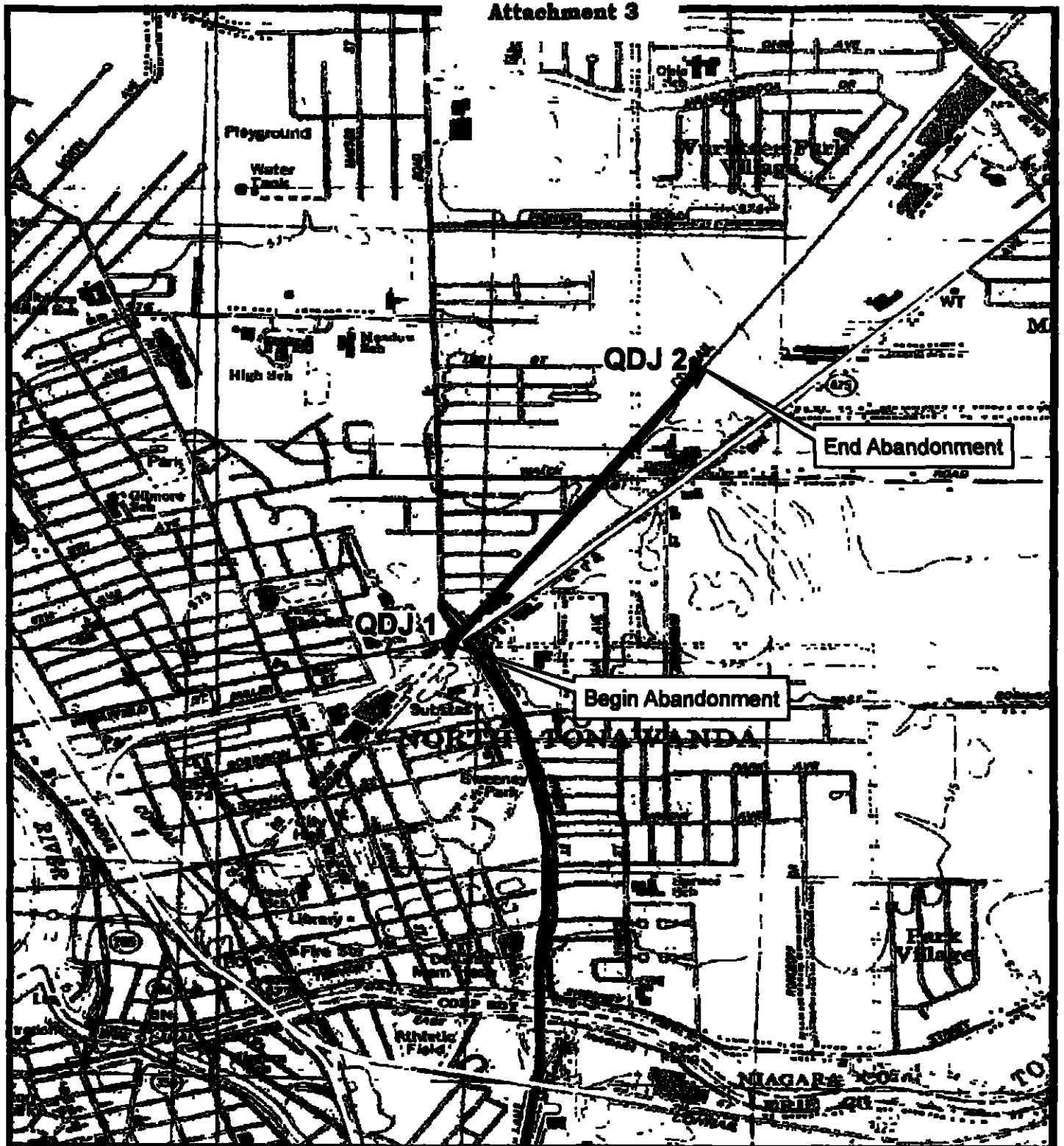
Not Applicable

- (7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. 60.4), and

Attachment 1



Attachment 3



Legend

SUBJECT
CSX

Approximate Latitude and Longitude at QDJ 1.0 - Wurlitzer IT -
 $N43^{\circ} 02' 16.25'' W78^{\circ} 51' 54.28''$
 Topo: USGS 24k TONAWANDA EAST Quad (USGS_QD_ID. 43078-A7)
 Projection is: GCS_WGS_1984 - UTM Zone 17 (NAD83)

CSX
 REAL PROPERTY
 GIS MAPPING SERVICES
 Drawn By L. Fenwick
 Rev Date Oct 24, 2008